

Executive Registry

72-26698

OGC Has

XR73-1098

29 SEP 1972

MEMORANDUM FOR: Executive Director-Comptroller

SUBJECT: [REDACTED] - Appeal for Payment
of Compensatory Overtime

25X1A

REFERENCE: 10 May 72 Memo fr IG for DCI, Same
Subject

1. Upon a review of this case, I have determined that the Agency should proceed to make a reasonable payment to Mr. [REDACTED] claim for unused compensatory time. It appears to me that Mr. [REDACTED] claim might be settled on the basis of the number of verifiable hours worked in excess of 48 per work week. I have not signed the proposed letter, however; rather, I would like this settlement negotiated with Mr. [REDACTED] in a fashion to protect the Agency to the extent possible.

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2. I am aware that this may generate additional claims which should be examined on a case-by-case basis to determine both their merits and the precision of the documentation justifying them.

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Drafted: ExDir-Compt
Redrafted: SSA/DDS
Redrafted: OGC:LRH:jeb
cc: General Counsel
Inspector General
Director of Personnel
Director of Finance
DCI
DDCI
✓ER
DDS

RICHARD HELMS
Director

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SEP 22-2669/7

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TO	NAME AND ADDRESS	DATE	INITIALS
1	Executive Director	9/21	
2	EG DDS		
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ACTION		DIRECT REPLY	PREPARE REPLY
APPROVAL		DISPATCH	RECOMMENDATION
COMMENT		FILE	RETURN
CONCURRENCE		INFORMATION	SIGNATURE
Remarks:			
1-3: Please implement & advise me of the results			
			
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FROM: NAME, ADDRESS AND PHONE NO.			DATE
DCI			22 Sep 72
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22-2669/6

26 JUL 1972

MEMORANDUM FOR: Inspector General

SUBJECT : [REDACTED]

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1. I regret being somewhat difficult on this case, but I am concerned over its implication as a precedent and its possible triggering of other claims. These are the same concerns I had in April 1966 when we generated 7321, which gave the Station authority to act differently than the words of the Regulation. Your point, nonetheless, has considerable validity as to whether this action was approved at a level which authorizes us now to say that there was due approval of this exception to the Regulation promulgated under the Director's authority.

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2. On the other hand, there are weaknesses also in Mr. [REDACTED] claim. I note that the Regulation states that accrued compensatory time will be forfeited should an employee not use it within a specified time or should he be transferred, in the absence of certification that his opportunity to use it had been denied because of conditions "beyond the employee's control related to his Agency employment." Your discussion in paragraphs 11 and 12 of your original paper seems to jump from the fact that he did not use it and that other employees did not normally take compensatory time off in Vietnam to an assumption that it "had been denied because of conditions beyond the employee's control related to his Agency employment." I am not convinced that this follows to the degree you indicate, particularly since Mr. [REDACTED] apparent practice, at least in part, was to utilize annual leave (which would have been forfeited under law) rather than compensatory time during his family visitation travel (FVT).

3. In my view, therefore, we are faced with a situation with some claim of right on both sides. I agree that a court might decide in favor of Mr. [REDACTED] but on the other hand, I also believe it might not. In this situation, I would appreciate some further examination of the following:

a) A statement in dollar terms of what Mr. [REDACTED] claim would amount to.

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SENSITIVE INFORMATION, SOURCES
AND METHODS INVOLVED

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(insert date or event)

b) A general estimate (as I know that no precise figure can be derived) of the contingent liability of the Agency if a similar claim were made by the other employees affected by this situation, who have been dormant to date, but who might be triggered by a favorable decision in this case.

c) Examination of the possibility of a compromise solution to this case through award of annual premium pay to Mr. [REDACTED]. This of course was only authorized in Vietnam in 1968, but it might be a reasonable compromise of our conflicting positions.

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d) An estimate of the contingent liability of the Agency should annual premium pay be applied for by other employees under the same circumstances as Mr. [REDACTED]

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4. With this information in hand, we could then decide whether to negotiate a compromise solution to this case with full knowledge of what it might involve, as well as its alternatives. While I fully understand the points made in the Inspector General's and the General Counsel's review of this case, I also believe it important to reflect the basic approach taken by the Congress in the special authorities given the Director and in the special retirement system authorized under CIARDS, both of which expect something more from CIA than the nine-to-five office service of normal civil service employees. Vietnam was a very special challenge and had to be met by a very special reaction. The Agency met the challenge in an outstanding fashion, but I feel it quite inappropriate to try to apply to that situation the time and attendance regulations of Washington bureaucracy. Most of our employees have served there without special plea; I believe that careful handling of this case is due them for the manner in which they performed without looking for the small print in the Regulations.

/s/ W. E. Colby

W. E. Colby
Executive Director-Comptroller

WEC:sfc

Distribution:

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1 - General Counsel

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Executive Registry

72-2669/5

21 JUL 1972

MEMORANDUM FOR: Executive Director-Comptroller

SUBJECT : [REDACTED] - Appeal for Payment of
Compensatory Overtime

REFERENCE : Your Memorandum dated 12 June 1972

1. We have made a further review of FE Division correspondence with the Vietnam Station in an effort to turn up additional information relating to discussions on overtime and leave in Vietnam during the 1965-1966 period. We have also talked with persons who might have been involved in these discussions at the time, including, in particular, [REDACTED] the then Chief of Support, FE.

2. The information that we have been able to find, both from the files and from conversations with the personnel involved, confirms the point made in your memorandum that many officials in Headquarters were aware of and in agreement with the policies and actions of the Vietnam Station with respect to overtime and leave. The dispatch you cite, [REDACTED] 7321, was coordinated with the Office of the Director of Finance and the Office of SSA/DDS outside FE Division. It was released by Chief of Support, FE on behalf of Chief, FE. There is some question, however, whether this constituted competent authority to modify the pertinent regulations, particularly when no action was taken subsequently to amend these regulations. HR [REDACTED] were next reissued in March 1968, but the paragraphs pertaining to overtime for GS-11's and above were not changed. On the other hand, the Office of General Counsel issued an opinion in October 1968, which was not challenged at the time, which stated that [REDACTED] contravened Agency regulations. The claim for overtime payment — also a Vietnam case — which evoked the OGC opinion was subsequently paid by the Agency.

3. Even if the approval of Station policies given by Headquarters dispatches did have the effect of modifying or superseding the regulations in question, the question would then arise whether the Headquarters actions were themselves valid. In essence, the situation under the Station policy was as follows: (1) all supervisors in the Vietnam

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[REDACTED] (insert date or event)

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AND METHODS INVOLVED**CONFIDENTIAL**

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Station were under clear instructions from the COS to man their offices on a seven-day week; (2) the supervisors interpreted this literally and ordered their key personnel on duty accordingly; (3) employees of grade GS-11 and above were deprived of the option of being paid for this directed overtime; (4) they were limited by Station needs in the amount of compensatory time they could take off; and (5) they were deprived of the opportunity to receive either payment or time off upon their departure from Vietnam. This was equivalent to telling an employee that he had to work overtime, that he would not be paid for it, and that his right to compensatory time off was a contingent, not an absolute, right.

4. There are other alternatives in the [REDACTED] case to paying the claim now. We can deny his claim on the grounds that the Agency is not bound by Federal legislation on leave and overtime and that payment of claims such as Mr. [REDACTED] is contrary to Agency policy. We can point out that [REDACTED] did not take exception to the policy when he left Vietnam and that his long delay in filing a claim makes it impossible for the Agency now to ascertain through investigation all the facts necessary for an equitable decision. If Mr. [REDACTED] accepts this position, the case would be considered closed. If he does not accept it, the Agency would still have two courses of action open. When Mr. [REDACTED] pursued his claim further, we could decide to pay it then, or we could contest it and accept the risk of an adverse decision in a court action. Although there are obvious drawbacks to these alternatives, the Agency might be justified in giving them serious consideration in view of the issues involved.

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5. This memorandum has been coordinated with the General Counsel.

(Signed) William V. Broe

William V. Broe
Inspector General

cc: General Counsel

OIG: [REDACTED] (17 July 1972)

Distribution:

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Executive Registry

72-266918

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Your claim for payment for unused compensatory overtime that you accumulated during your assignment to Vietnam for 1966 to 1968 has been investigated by the Inspector General.

As a result of my review of the findings and recommendations of the Inspector General, I have decided that you are entitled to payment for properly approved overtime performed in Vietnam which you were unable to use as compensatory time off. I have accordingly instructed the proper authorities to contact you, in order to advise you of what additional information may be required from you to properly document your claim. You should hear from them soon.

Sincerely,

Richard Helms
Director

cc: Office of Finance
Office of Personnel
Office of General Counsel

O/IG (9 May 72; retyped for change of address 24 Jul 72)

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72-2669/4

12 June 1972

MEMORANDUM FOR: Inspector General**SUBJECT : [REDACTED] Appeal for Payment
of Compensatory Overtime**

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1. I would appreciate your giving some further consideration to this case, in coordination with the General Counsel. As noted in [REDACTED] 7321 of 20 April 1966, Headquarters specifically advised the Saigon Station that "we concur with your recommendation that unused compensatory time for personnel in grades GS-11 and above not be certified for reimbursement or use on departure from the Station." It strikes me that this authorization casts some doubt on the basic thesis of your report and General Counsel's comments that benefits authorized by a Headquarters regulation were denied by a field action. In this case the field action was apparently specifically authorized by an official Headquarters communication.

2. Our location of this authorization stems from my own memory of considerable discussion of this problem at about that time. While I personally was probably the releasing official on this dispatch, or at least was responsible for it, I believe there was a general discussion of it with appropriate officials in Headquarters at the time. A review of the case could perhaps identify the degree to which the matter was officially authorized at that time, which would have considerable bearing on the case. Thus, without in any way predetermining the result of your review, I would appreciate your taking a new look.

/s/ WEC

W. E. Colby
Executive Director-Comptroller

cc: General Counsel

WEC:blp

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18 May 1972 •

MEMORANDUM FOR: Executive Director-Comptroller

SUBJECT: [REDACTED] - Appeal for
Payment of Compensatory Overtime

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1. You are quite correct in your memorandum of 15 May 1972 in saying that CIARDS is a special benefit provided to CIA employees in recognition of the special demands made upon them during qualifying service. The unusual demands, particularly in the Field, on Agency employees for out-of-hours' and extra hours' duty were one of the justifications for the CIARDS legislation. Also, the benefits of CIARDS have been taken into consideration in writing some of the Agency regulations, such as those applying to overtime.

2. The point involved in the [REDACTED] and similar cases is not a balancing of general interests, such as those mentioned above, but the fact that a Headquarters regulation provided certain benefits which were in effect denied by the [REDACTED]. It is our opinion that if this case were put before a court of law the court would look at the basic properly authenticated regulation, which would be the Headquarters regulation, and grant the benefits provided therein regardless of the limitations of the subsidiary regulation. It is on this technical point that we believe we have to accept Mr. [REDACTED] documented claim for overtime.

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[REDACTED]
LAWRENCE R. HOUSTON
General Counsel

ER 72-2669/2

15 May 1972

MEMORANDUM FOR: General Counsel

SUBJECT : Mr. [REDACTED] - Appeal for Payment
of Compensatory Overtime

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1. It occurs to me that your review of this case omits one very significant point. When one of our officers is serving abroad, he is accumulating "qualifying service" under CIARDS. CIARDS is a special benefit provided to CIA employees in recognition of the special demands made upon them during qualifying service. It can be considered somewhat of an extra compensation for the special requirements of the Agency, among which are certainly the irregular hours and extra demands on our personnel's time, especially those of upper grades.

2. With this special legislative recognition of the special character of our service, I would think that the contention could be made that overtime is an expected attribute of our service and is not compensated for in detail but rather in general by the special CIARDS emoluments. I do not believe that the detail of whether an officer actually meets the full qualifying service requirement in years, or has already met it, need affect the general principle.

3. I would appreciate your comments.

/s/ WEC

W. E. Colby
Executive Director-Comptroller

Attachment:

[REDACTED]

[REDACTED]

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Executive Registry

72-2669

10 MAY 1972

MEMORANDUM TO: The Director

SUBJECT : Mr. [REDACTED] - Appeal for Payment of Compensatory Overtime

1. [REDACTED], a GS-12 Logistics Officer, retired from the Agency on 28 May 1971, with over 24 years of Government service, 16 of which were with CIA. Shortly before his retirement he submitted a request to FE Division for payment for 2,478 hours of compensatory overtime he claimed to have accumulated during a tour in Vietnam from August 1966 to June 1968. FE Division advised Mr. [REDACTED] orally that his claim was not payable since it was FE Division's and Saigon Station's policy that accumulated compensatory time not used prior to reporting to Headquarters PCS was forfeited. [REDACTED] requested information on how to appeal this decision and was referred to the Director of Personnel. [REDACTED] Deputy Director of Personnel, met with [REDACTED] and reviewed with him Vietnam Station policy concerning payment for overtime. [REDACTED] asked that he be advised in writing of the rejection of his claim. He was so advised by letter from Mr. Fisher, Director of Personnel, dated 9 June 1971, at which time he was advised of his right to request a review of the decision by the Inspector General. On 5 February 1972, [REDACTED] filed his "claim against the Central Intelligence Agency for payment of 2,478 hours of compensatory time accrued while on tour in Vietnam," and requested that the claim "receive the highest review."

Background Information

2. [REDACTED] entered on duty with CIA on 8 August 1955 as a GS-7, Administrative Assistant in the Office of Logistics. He served in various capacities with the Office of Logistics, including overseas assignments in

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K1A [REDACTED] Vietnam. He received good Fitness Reports throughout virtually his entire career in the Agency, including high praise from numerous supervisors as a conscientious and productive officer. He received a Quality Step Increase in 1967 for his contribution to the Logistics mission of the Vietnam Station. His last Fitness Report rating in Vietnam was Outstanding. He was promoted to GS-12 in November 1970.

K1A 3. The entire Station in Vietnam was on a seven-day workweek during the period of Mr. [REDACTED] assignment there. A Station Bulletin, dated 30 June 1966, announced that "henceforth, it will be Station policy to be so organized that we can function at an acceptable level seven days a week, 24 hours a day." The Bulletin emphasized that "weekends and holidays are in no sense sacrosanct, although to the extent possible we shall allow a more flexible schedule on holidays, Saturday afternoons and Sundays." This policy was reemphasized in a Station Bulletin, dated 23 August 1966, which referred to the earlier Bulletin and asked all personnel to reread it. The notice went on to say that "this Station cannot function satisfactorily if Saturday afternoon and Sunday are considered to be automatic leisure periods." It concluded that "since there will of necessity be requirements for many employees to work on weekends, the Station will be as generous as our resources permit in providing R&R and Safehaven travel for all personnel in an effort to provide an opportunity for rest, recreation, and visits to families nearby."

X1A 4. Shortly before the above notices were issued, the Station issued a [REDACTED] dated 11 May 1966, entitled "Leave Time [REDACTED]" One purpose of this [REDACTED] was to establish the procedure for recording the accrual and use of authorized compensatory overtime. This [REDACTED] stated that GS-11's and above would not be reimbursed for overtime, except for hours as Duty Officer (this exception was later rescinded). It provided for the donation of the first eight

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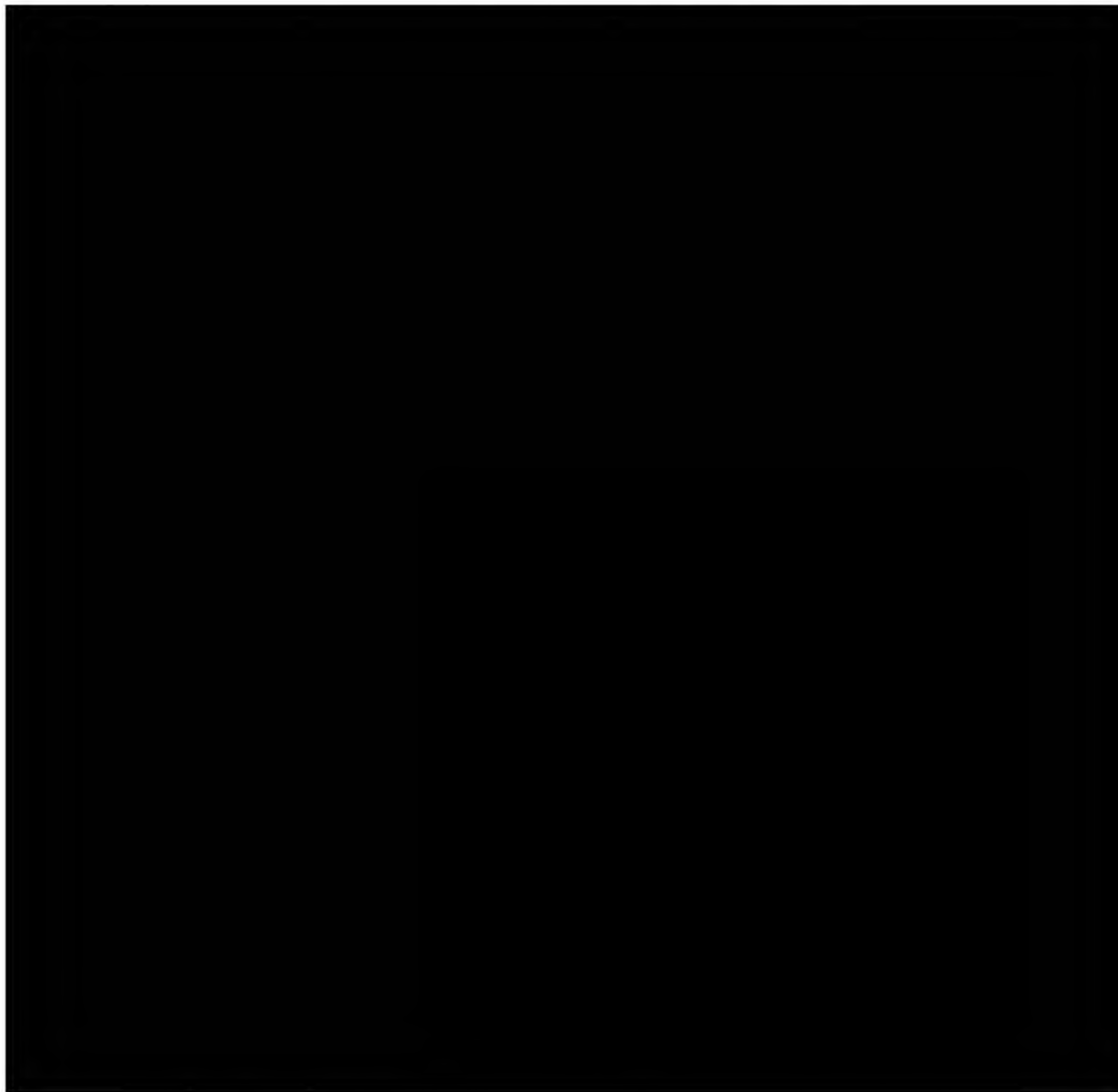
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hours of overtime each week in accordance with Agency policy, and the entry of all other overtime worked on a special record, along with any leave taken against the compensatory time during a given period. The Directive then stated: "Unused compensatory time for personnel in grades GS-11 and above shall not be certified for reimbursement or use upon departure from the Station."

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5. The pertinent Agency regulations governing overtime are HR [REDACTED] and [REDACTED]. During the period in question these regulations contained the following provisions concerning compensatory overtime:



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6. One other regulation bearing on this case is HR [REDACTED] (with an identical provision in [REDACTED]. Paragraph 2a(8) of this regulation provides that "normally, the time authorized for travel, consultation, and leave between assignments will be limited to 60 calendar days."

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7. Pursuant to Station regulations, [REDACTED] maintained a record of his accrued overtime as well as of leave taken against it. The information was recorded on the required Personnel Overtime Certification Form and certified by [REDACTED] supervisor at the end of the pay period. A copy of these forms was forwarded by the Station to Headquarters in response to a request from Headquarters in December 1968 for compensatory time balances for all employees who had already departed the Station. From these forms and from other information available in Headquarters, we have reconstructed [REDACTED] leave record for the period in question. (The original Duty Status Reports for the period have been destroyed, in accordance with Agency policy to destroy such records after three years.)

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8. At the beginning of his tour in Vietnam, [REDACTED] leave balances were:

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Annual. 334 hours
Sick. 842 hours
Home. 14 days

During his assignment in Vietnam, [REDACTED] accrued leave as follows:

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Annual. 364 hours
Sick. 192 hours
Home. 26 days
Compensatory. . . . 2722 hours (claimed)

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charged leave during his tour:

Annual. 214 hours
Sick. None
Compensatory. . . . 244 hours

forfeited 54 hours of annual leave in 1966 and 88 hours in 1967. On completion of his tour in May 1968, [REDACTED] took 40 days home leave and 16 hours annual leave before reporting to his new assignment at Headquarters in July 1968. His leave balances at that time were:

Annual. 424 hours
Sick. 1034 hours
Home. None
Compensatory. . . . 2478 hours (claimed)

Analysis

9. It is evident from the Station issuances cited above that [REDACTED] and all other Agency employees in Vietnam were directed to work overtime. The Chief of Station clearly had the authority to establish such hours of work under both Headquarters and Field Regulations.

10. Special leave provisions were established for personnel assigned to Vietnam to give them relief from their arduous schedule and to enable them to visit their families. It was anticipated that leave taken under the Family Visitation Travel (FVT) Program would normally be charged to compensatory time the employees had accrued. This would enable employees to use their accrued compensatory overtime and let their annual leave accumulate toward the maximum permitted by law. However, since it was optional with the employee whether to charge annual leave or compensatory time, those people who had already accumulated their maximum annual leave, such as [REDACTED] tended to charge at least some of their FVT to annual leave. As paragraph 8 above shows, this is what [REDACTED] did. Despite this, [REDACTED] forfeited annual leave each year he was in Vietnam. Even if he had charged all the leave he took while in Vietnam to compensatory time, [REDACTED] would not have used all that he accrued.

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X1A 11. Since [REDACTED] failed to use all his compensatory time while he was assigned to Vietnam, the question arises whether this was due to his own preference or whether he was prevented from doing so "because of conditions related to his Organization employment" [REDACTED]. We have talked with a number of people who were in Vietnam during this period in an effort to get a feel for the situation in the country at that time. We have also talked with persons who knew [REDACTED] and who were familiar with his work there. We were told that, although there was no order forbidding it, in-country leave was rarely taken. It was generally expected that if an employee was in country he would be on duty. It was permitted to take leave in [REDACTED] other places in the area. For the most part, such opportunities were utilized by unmarried personnel. One senior officer who knew [REDACTED] said that [REDACTED] was a hard worker who rarely took leave except for FVT. [REDACTED] supervisor in Vietnam, who is now in Washington, said that [REDACTED] was a uniquely conscientious person. Shortly after they arrived in Vietnam it became necessary to take a complete inventory of all supplies and equipment in connection with the change of the Vietnam Station from a Type II to a Type I installation. [REDACTED] and others worked far into the night for an extended period on this project. [REDACTED] had a very busy schedule. Thus, while it was theoretically possible for employees to take leave in addition to FVT, as a practical matter it was virtually unheard of for conscientious employees like M [REDACTED]

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X1A 12. [REDACTED] also did not ask for an exception to HR- [REDACTED] to permit him to take more than 60 days between assignments upon his departure from Vietnam and thus use up some of his compensatory time. For one thing, the Station Directive quoted above expressly stated that unused compensatory time would not be certified for use upon departure from Vietnam. Moreover, although HR [REDACTED] is so worded as to allow for exceptions to the 60-day limitation on time between assignments, in practice these exceptions have been relatively rare. On the one hand, most receiving components plan their personnel assignment changes on the assumption that the 60-day limit

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will be observed. Thus, if a returning employee has a job waiting for him, the receiving office wants him there by a specified date. On the other hand, many employees find it impractical, from the point of view of cost or for other personal reasons, to take all the leave they have accrued. The experience of the Office of Logistics has been consistent with this pattern. We were informed that Logistics tries to make it possible for its personnel to take up to 60 days if they so desire, but that additional leave beyond this amount normally is approved only for personal emergencies or other compelling reasons.

X1A 13. Summing up [REDACTED] case, we find that (a) he was required by Vietnam Station Directives to work many hours of overtime, (b) he was prevented from taking compensatory time off because of the press of his duties, and (c) he was denied either payment or use of the overtime upon departure from Vietnam by the Station Directive. We asked the Office of General Counsel to comment on the legal validity of the Station's regulation concerning overtime. OGC stated that the Station Directive in question was:

"basically inconsistent with Headquarters Regulations and [REDACTED] which, in effect, authorized the Chief of Station to certify unused compensatory time when the employee, because of press of duties, had been unable to use his compensatory time. Consequently, it is the view of the Office of General Counsel that if, in fact, the individual was prevented from using his compensatory time, under the regulations the Chief of Station was required to certify such amount for payment. Therefore, if we were required to give a formal ruling, the holding would be that documented unused compensatory time which the employee was unable to use is properly payable despite the Chief of Station's failure to certify."

X1A 14. Headquarters established a new overtime policy for Vietnam in 1968. This policy, which introduced the use of premium pay for many employees in lieu of overtime, was communicated to the Station by dispatch ([REDACTED]-13651), dated 19 December 1968. As a result of the new policy, the Station Directive in question was modified.

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X1A 15. Another feature of the Agency's overtime policy that is at issue here is the so-called eight-hour rule. This policy, which is enunciated in HR [REDACTED] and [REDACTED], distinguishes between work which is "accurately measurable for compensation purposes," and work which "requires the exercise of executive and professional skills." During the period we are concerned with here, grades GS-10 and below were considered to fall in the first category, while grades GS-11 and above were regarded as being in the second. The policy provided that any individual in the second category (GS-11 and above) who performed directed overtime could be authorized payment for the overtime (or compensatory time off) only for hours of duty in excess of 48 hours in any one week. At the same time the regulation provided that any individual directed to work on seven or more consecutive days could be paid overtime (or given time off) for the work performed on Saturday and Sunday. The regulation was not explicit on whether an individual who worked overtime during the week and on Saturday and Sunday must forfeit eight hours of overtime before being paid for the overtime or given compensatory time off. The Vietnam Station interpreted it as requiring the forfeiture of the first eight hours of overtime in any week. The Personnel Certification Forms, on which compensatory overtime was recorded in Vietnam, carried a routine 32-hour deduction for each four-week period. A total of 640 hours were deducted from [REDACTED] overtime under this policy. [REDACTED] includes this overtime in his claim. 25X1A

X1A 16. The Agency's overtime policy is admittedly at variance with Federal legislation. The Office of General Counsel has taken the position that the Agency is exempt from this legislation, but has pointed out from time to time that a judicial review of the question might end up with a different conclusion. As a matter of policy, however, the Agency has to date decided to accept the risks of an overtime policy which was at variance with that prescribed by law. This decision has been reviewed on more than one occasion in recent years and reaffirmed.

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17. Without raising the general question concerning the eight-hour rule, we believe the Vietnam Station incorrectly interpreted the regulations concerning it as it applied to Vietnam. It seems illogical to state explicitly that there was more work to be done in Vietnam than could be done -- which was, in effect, what the Station Directives said, -- order everybody to work a seven-day week, and then ask employees above a certain grade to donate eight hours of overtime per week. It would seem more reasonable to interpret the provision of [REDACTED] (that individuals of grade GS-11 and above who were directed to work on seven consecutive days would be paid for Saturday and Sunday work) as meaning that they could also be paid for all other overtime work performed during that week. (Note: A provision was incorporated in the 1970 revision of HR [REDACTED] making it clear that the eight-hour deduction is not required where a seven-day week is involved.) In [REDACTED] case, the records show that he actually worked all but six Sundays while he was in Vietnam and that he worked overtime during the week in all of those weeks.

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18. This is not the first claim for payment of overtime that we have had from Vietnam.

a. In June 1968 [REDACTED] a former GS-12 level contract employee, presented a claim for overtime performed in Vietnam from May 1966 to May 1968, indicating in his letter that he intended to press his claim with legal action if necessary. This claim was referred by FE to the Office of General Counsel for opinion. When the OGC held that Vietnam Station [REDACTED] was in conflict with Agency regulations and that Kissel had been improperly denied payment or use of his compensatory time, the Executive Director-Comptroller approved [REDACTED] claim for payment. In the discussion following approval of [REDACTED] claim, Colonel White asserted that other claims of this kind would be considered on a case-by-case basis when submitted by the individual concerned and that we would pay a claim only if we

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were able to verify the data submitted by the claimant. When it was pointed out that we might receive claims in the future from staff employees, Colonel White indicated that a very tough line would be followed with respect to staff employees. This led to a discussion of the eight-hour rule, during which Colonel White emphasized that he did not want to see a return to the practice of paying overtime to people who might come to work a bit early, stay a bit late and take an ample lunch period. He said he would rather seek special legislation than change our policy.

b. In December 1969, [REDACTED], also a former contract employee, presented a claim for payment of compensatory overtime earned in Vietnam from July 1966 to March 1968, and from January to December 1969. This claim was rejected by FE Division, after which [REDACTED] appealed to the Inspector General. The case was referred by this office to SSA/DDS for review. After discussions involving the SSA/DDS, the Assistant DDS, the Office of General Counsel, and the Office of Finance, it was decided that the initial response to [REDACTED] should be to approve his claim for the overtime performed during 1969 but to deny the part pertaining to 1966-68 on the grounds that payment was not authorized by Agency regulations. [REDACTED] was advised accordingly by the Director of Personnel, and to date he has not pressed his claim further. During the discussions on this case it was noted that Colonel White's instructions on claims for overtime prior to 1969 were to examine each one very carefully and pay as few as possible in order not to open up Pandora's box and flood the Agency with old claims for overtime.

c. In April 1971 [REDACTED], a GS-13 staff employee, submitted a claim for payment of 381 hours of unused compensatory time earned in Vietnam from March 1967 to December 1968. He filed in support of his claim a certification, which had been forwarded to Headquarters in January 1971 by the then Chief of Station, that [REDACTED] was not afforded the opportunity to use his accrued compensatory

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X1A time prior to his PCS departure from the Station. Despite this statement, and the necessary documentation establishing the compensatory time balances, [REDACTED] was informed orally by the then SSA/DDS that payment of his claim was not authorized. [REDACTED] said he was prepared to accept the word of the SSA/DDS, and did not pursue his claim further. 25X1A

d. We have also heard of other cases where employees have asked, either formally or informally, whether they could be reimbursed for unused compensatory time earned during assignment to Vietnam and upon being told by support personnel either in Vietnam or in Headquarters that reimbursement for service prior to 1969 could not be authorized, have not pursued their claims. A rough estimate recently made at Headquarters, based on records forwarded by the Vietnam Station, indicate there are approximately 40,000 hours of compensatory overtime earned prior to January 1969 still outstanding. It is not known at the moment how much of this could be fully documented or how many claims might be presented if the decision were taken to consider such claims.

19. Despite the possible implications of such a decision, I believe the Agency has no alternative but to honor [REDACTED] claim. I believe the Vietnam Station erred in requiring [REDACTED] to forfeit his unused compensatory time upon departure from Vietnam. Since [REDACTED] was never given the opportunity to use this compensatory time, he should be paid for it. 25X1A 25X1A 25X1A

It is recommended:

X1A a. That you authorize and direct the Director of Finance to pay [REDACTED] for all properly certified unused compensatory overtime that he performed in Vietnam.

X1A b. That you advise [REDACTED] by letter of your decision. A suggested draft of this letter is attached.

(Signed) William V. Broe

William V. Broe
Inspector General

X1A Attachment
(Proposed Letter to [REDACTED])

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Executive Registry
73-266911

K1A

[REDACTED]

Your claim for payment for unused compensatory overtime that you accumulated during your assignment to Vietnam from 1966 to 1968 has been investigated by the Inspector General.

As a result of my review of the findings and recommendations of the Inspector General, I have decided that you are entitled to payment for properly approved overtime performed in Vietnam which you were unable to use as compensatory time off. I have accordingly instructed the proper authorities to contact you, in order to advise you of what additional information may be required from you to properly document your claim. You should hear from them soon.

Sincerely,

Richard Helms
Director

cc: Office of Finance
Office of Personnel
Office of General Counsel

OIG (9 May 1972)

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